Filed 6/23/09 In re Joel E. CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re Joel. E. et al., Persons Coming Under the Juvenile Court Law.	H033576 (Santa Clara County Super. Ct. Nos. JD17937, JD17938 & JD17939)
SANTA CLARA COUNTY DEPARTMENT OF FAMILY AND CHILDREN'S SERVICES, Plaintiff and Respondent, v. Joel E., Defendant and Appellant.	

Appellant Joel E., father of Joel E., III, Jacob E. and Angel E., ages 3 years, 2 years and 17 months respectively, appeals from a juvenile court order terminating his parental rights pursuant to Welfare and Institutions Code section 366.26.[1] The Santa Clara County Family Court ordered the children into protective custody because their parents failed to follow through with family court orders. Thereafter, the Santa Clara Department of Family and Children's Services (Department) filed a petition pursuant to

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

section 300, subdivision (b) on behalf of the children. The petition alleged that the children's mother suffered from alcoholism, that appellant failed to provide for the children's financial welfare and that neither parent was sufficiently addressing Joel E., III's medical conditions. The family had 10 prior referrals and neither parent had their own place of residence.

The court detained the children, subsequently sustained the petition, removed the children from the parents' custody and ordered reunification services. Appellant repeatedly failed to visit the children during his scheduled visitation, requested less frequent visitation and failed to reschedule missed visits. He also failed to complete required parenting classes because he threatened classmates and was terminated from the class. Because neither parent had made progress toward reunification and because the children had been successfully placed together in an adoptive home, the Department recommended terminating services. On January 16, 2008, at the contested six-month hearing the court terminated services and set a hearing pursuant to section 366.26. At the section 366.26 hearing, the court recognized that appellant deeply loved his children, but found that he was not in a position to take care of them now, nor had he been for years. The court found the children to be adoptable and terminated parental rights. This timely appeal ensued.

We appointed counsel to represent appellant in this court. Appointed counsel has filed an opening brief which states the case and the facts but raises no specific issues. (*In re Sade C.* (1996) 13 Cal.4th 952 (*Sade C.*).) In the opening brief, counsel acknowledged that this court has no duty to independently review the record pursuant to *People v. Wende*,[2] but requested that we allow appellant the opportunity to submit a brief in propria persona pursuant to *Conservatorship of Ben C.*, (2007) 40 Cal.4th 529, 543-544 (*Ben C.*). The Department sent a letter informing us that they would not be filing a response brief.

[2] *People v. Wende* (1979) 25 Cal.3d 436.

In *In re Sara H.* (1997) 52 Cal.App.4th 198 (*Sara H.*), analyzing the Supreme Court's reasoning in *Sade C.*, we held that the proper course of action in a juvenile dependency case, where counsel finds no meritorious appellate issue upon scrutiny of the record, is to deem the appeal abandoned and to dismiss it. (*Id.* at pp. 201-202.) We held that we do not have discretion to review the record, under any circumstance. (*Id.* at p. 201.) The two foundational principals underlying the holdings in both *Sara H.* and *Sade C.* are the need for speedy resolutions in dependency cases, and the recognition that independent review of the record causes intolerable delay. (*Ibid.*) Despite these holdings, appellant's counsel urges us to adopt the procedure articulated in *Ben C.* In *Ben C.* the Supreme Court held that where counsel has filed a no issue brief in a conservatorship proceeding, before dismissing the appeal as abandoned, the appellant should have the opportunity to submit a supplemental letter brief in propria persona. (*Ben C., supra*, 40 Cal.4th at p. 544, fn. 6.)

Although *Ben C.* was a conservatorship proceeding, the rights implicated in a dependency proceeding are, at least, equally fundamental. Further, in the past, where counsel in a dependency case was preparing to file a "no issue" letter pursuant to *Sade C.*, we have allowed the appellant to file a motion to vacate the appointment of counsel so that he could file a brief in propria persona. We have often granted these motions, recognizing the fundamental nature of the rights at stake in dependency appeals as well as the due process implications of allowing an appellant adequate access to the appellate court.

Realistically, the process of allowing the appellant to file a motion to vacate counsel's appointment and then file a supplemental brief, as we have done in the past, would likely take as long if not longer than directly notifying the appellant that he has the right to file a supplemental brief. Therefore, there is no actual prejudice to the dependent child due to any delay caused by allowing the appellant an opportunity to file a supplemental brief in propria persona. In balancing the due process interests of the

appellant with the child's need for expeditious finality, we find that appellant should be afforded an opportunity to file a supplemental letter brief in propria persona.

Based on this conclusion, we notified appellant of her right to submit written argument in her own behalf within 30 days. Thirty days have elapsed and we received no response from appellant. Respondent requests that we dismiss the appeal.

The appellant having failed to raise any issue on appeal, the appeal must be dismissed as abandoned. (*Ben C.*, *supra*, 40 Cal.4th 529; *Sade C.*, *supra*, 13 Cal.4th 952.)

DISPOSITION

The appeal is dismissed as abandoned.

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RUSHING, P.J.

WE CONCUR:

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PREMO, J.

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ELIA, J.